IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.W.P. No.16111 of 2006
Date of Decision:23.11.2006

M/s Grosons Marketing (P) Ltd., through itself Director, Giddarbaha (Punjab)

.....Petitioner

Vs.

Joint Director, Directorate General of Central Excise Intelligence, Ludhiana and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Jagmohan Bansal, Advocate for the petitioner.

Mr. Sanjeev Kaushik, Advocate for the respondents.

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ADARSH KUMAR GOEL, J.

This petition seeks a direction for payment of value of the material belonging to the petitioner i.e., goods seized by the respondents under the provisions of Central Excise Act, 1944 (for short, `the 1944 Act') read with Customs Act, 1962 (for short, `the 1962 Act'), which according to the petitioner have perished in the custody of the respondents for the reason of their failure to discharge the statutory duty.

Case set out in the petition is that on 19.4.2006, goods of MRP value of Rs.50.55 lacs, belonging to the petitioner, stored in its godowns at Ahmedabad, were seized on the allegation that the same had been clandestinely removed by the manufacturer/seller, namely – Grover Sales Corporation without payment of excise duty due. Seizure was effected under Section 110 of the Customs Act, which has been made applicable to the 1944 Act by virtue of a notification issued under Section 12 thereof. The manufacturer/seller made a deposit of the duty involved on 20.4.2006 .

Section 110(1A) of the 1962 Act provides that in certain situations, including where the goods are perishable, the goods have to be disposed of after following the procedure specified therein. Relevant provisions of Section 110(1A) of the 1962 Act are extracted hereunder:

> "(1-A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified."

Case of the petitioner is that the goods seized were covered under Schedule to the Notification No.29/88-CE (N.T) dated 21.10.1988 issued under Section 110(1A) of the 1962 Act which inter-alia specified the goods of the kind which are of perishable nature and as such were required to be disposed of as per the statutory procedure, without any delay. It is not in dispute that the goods in question, which is snuff, is considered as a tobacco product falling under entry 7 of the Schedule to the notification dated 21.10.1988, as referred to above, which reads as under:

> "7. Cigarettes, biris and other tobacco products."

Vide letter dated 9.5.2006, Annexure P.2, the petitioner sought release of material on the ground that the duty had already been paid and in the alternative prayed that the goods may be sold, being perishable in nature, as required under the law. This was followed by letters dated 20.7.2006, Annexure P.4 and letter dated 14.8.2006, Annexure P.5.

This writ petition was filed on 10.10.2006 with the grievance that the goods having neither been released nor auctioned lost the value and thus the petitioner suffered loss of value of goods on account of failure of the respondents to follow the statutory duty and this entitles the petitioner to payment of an amount equal to the value of the goods or credit thereof, to be set of against the demand of duty, if any, raised against the petitioner.

In the reply filed, the stand taken on behalf of the respondents

is that an amount of Rs.1.53 Crores was outstanding against M/s Grover Sales Corporation, manufacturer/seller of the goods to the petitioner. It is further stated that the petitioner withdrew his request for provisional release and, therefore, could not have grievance. The adjudicating authority had still not decided the case and in absence of decision by the adjudicating authority, the goods could not be auctioned. The goods were handed over on a superdari to the petitioner for safe custody.

Learned counsel for the petitioner submitted that a case for direction for payment of value of material seized by the respondents is made out on account of failure on their part in not carrying out their statutory duty in auctioning the perishable goods resulting in loss thereof.

Reliance has been placed upon **Sunderbhai Ambalal Desai Vs. State of Gujarat,** AIR 2003 SC 638 to submit that responsibility for failure to follow the procedure and to comply with the obligation to auction the goods will be on the authorities concerned.

In **Sunderbhai Ambalal Desai's case (supra)**, the issue under consideration before Hon'ble the Supreme Court was the disposal of the property pending trial in terms of Section 451 of Code of Criminal Procedure. While referring to and relying upon an earlier judgment of Hon'ble the Supreme Court in **Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore and another,** (1977) 4 SCC 358, it was observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

In **Shilp Impex Vs. Union of India,** 2001 (128) E.L.T. 54 (Del.), a Division Bench of Delhi High Court consisting of Hon'ble the Chief Justice Arijit Pasayat and Hon'ble Justice D.K.Jain, as their lordships then were, while observing that the case in hand was a classic example of how the simple matters get complicated by authorities where the Customs officials were largely responsible for the confusion and impasse created, held as under:-

> "5. Though the order is appealable yet in view of the peculiar circumstances, we do not think it would be

proper to throw out the petition on the ground of existence of alternative remedy. In view of the factual position highlighted above, notwithstanding passing of order dated 8.8.2000 during pendency of writ petition, we entertain the petition. From the undisputed factual position it appears that the goods have already been sold and that too at much lesser price than the one declared by the petitioner and much less than the value of the goods adjudicated by the authorities. Though the petitioner had declared the value at Rs.4,34,835/-, according to the Department, it was Rs.6,24,997/-. It is baffling that the goods were sold for Rs.2,78,000/-. On 2.8.1999, Joint Commissioner had fixed the price at Rs.6,24,887/- as against the declared value of Rs.4,34,835/-. That being so, disposal of goods for Rs.2,78,000/- on 7.8.1999 appears to be somewhat queer and mysterious. Be that as it may, once the petitioner had deposited the duty, redemption fine and penalty, it was entitled to release of the goods.

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8. In the aforesaid background, petitioner is entitled to receive the value of the goods as fixed by the Department i.e. Rs.6,44,997/- and at the same time it is liable to pay redemption fine and duty which amount to Rs.3,80,000/-. Penalty of Rs.50,000/- has already been paid. Therefore, the Customs Authority shall return to the petitioner a sum of Rs.2,64,997/- (i.e the difference between Rs.6,44,997/- and Rs.3,80,000/-). The amount shall be remitted to the petitioner within a period of six weeks from today."

The SLP against the above judgment was dismissed by Hon'ble the Supreme Court as reported in 2002 (140) E.L.T. 3(S.C.).

A Division Bench of this Court in **Patiala Castings Private Limited Vs. Union of India**, 2003 (156) E.L.T. 458 (P&H), while passing strictures against the revenue officers, observed as under:-

"35. The sequence of events as noticed above clearly shows that the petitioner was not at fault at any stage. There was no misdescription of the goods. Fearing that delay in the destuffing of containers and release of goods can result in heavy demands, the petitioner had requested the respondents to mutilate the goods even before the consignment had been received. It had approached the Commissioner of Customs with this prayer. The petitioner's prayer had been accepted by the Commissioner. The communication is at Annexure P.3. Directions had been duly given to the concerned authority. Yet, the custom authorities had detained the goods. The Directorate of Revenue Intelligence had directed that the goods be seized. The delay in release had occurred on account of the action of the respondents. Even after the petitioner had approached this Court, the respondents had persisted in their claim that the goods were not metal scrap. A Local Commissioner was appointed. He had given a detailed report. Even after he had submitted the report, the petitioner had to seek a direction from this Court for the mutilation of the goods and their release. In the meantime, the respondents had raised heavy demand for payment of customs duty on the hypothesis that the goods were serviceable pipes. The petitioner had to furnish bank guarantee for Rs.42 lacs at the time of release of the goods. It had also to furnish a bank guarantee for an amount of Rs.6-1/2 lacs regarding the payment on account of demurrage to the Punjab State Warehousing Corporation. The petitioner had to furnish a surety bond also. As a result, a substantial amount of money had to be paid by the petitioner to the Bank on account of interest etc.

36. It is clear that the petitioner has been unduly harassed. If the petitioner had imported goods different from those

as described in the import documents, it may have been possible for the respondents to justify the demand for `duty' or even demurrage etc. However, in the present case, it is clear that the goods were scrap. These were not serviceable pipes. Thus, the department itself is responsible for the charges on account of the delay in release of `containers' and demurrage on account of the delay in the release of goods. The petitioner is not responsible in any manner whatsoever. Thus, the petitioner shall be entitled to the reimbursement of the amount deposited by it on account of payment of charges in respect of the containers. It shall not be liable to pay any demurrage. It shall be the responsibility of the custom authorities. The first respondent shall determine as to who out of the concerned authorities was responsible.

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38. Before parting with the case, it deserves notice that the petitioner has been put to a considerable harassment and inconvenience. In the process, the Government has also suffered loss of foreign exchange in as much as payment of Rs.35 lacs had to be made to the Shipper who had transported the goods to India. It is a fit case where the Government should fix the responsibility and take appropriate action against the defaulting officer/s. On a perusal of the record, we are prima facie satisfied that Mr. R.C.Sankhla who has filed the affidavit has to explain his conduct in this case."

Learned counsel for the petitioner submitted that finalisation of adjudication proceedings or not taking the goods pursuant to order of provisional release, were not relevant to the issue. The respondents are absolved of their responsibility merely by stating that they had taken up the matter for disposal of goods when factually no effective steps are shown to have been taken in accordance with the procedure laid down under the 1962 Act.

Learned counsel for the petitioner further points out that, from the approved valuer, the goods were got examined and a report dated 2.11.2006 has been submitted to the effect that the value of the goods was now nil.

Learned counsel for the respondents, on the other hand submitted that the adjudication having not been completed and the petitioner having not availed of the order of provisional release, respondents were not responsible for loss of value of goods as they were under no obligation to auction the same. It has also been pointed out that after receipt of letter dated 14.8.2006, on 17.8.2006 the matter has been taken up for disposal of the goods and the process was taking some time as the goods are in the custody of authorities at Ahmedabad.

We have heard rival contentions of the parties and gone through the record.

The question for consideration is whether direction for paying to the petitioner, the value of material seized, is called for.

In view of the factual matrix as mentioned above, we do find that the respondents have failed to deal with the goods, which were perishable in nature, in the manner required. No material has been placed before us to hold that the respondents have taken steps as statutorily required. The respondents having failed to discharge their statutory duty diligently in conformity with law are certainly liable to the consequences thereof. However, direction for giving the value of goods to the petitioner at this stage does not arise as the matter of liability of goods to confiscation is yet to be decided. We only hold that subject to such decision, the petitioner will be entitled to payment of value of goods.

We, therefore, partly allow this petition and direct that the adjudicating authority will finalise the matter within six months from the date of receipt of a copy of this order and subject to such a decision, the petitioner will be entitled to payment of or adjustment of value of goods after determining to what extent the loss of value of goods has taken place.

Respondents will also be at liberty to determine the liability of the persons responsible for causing avoidable loss to the State and take appropriate action for recovery thereof from the guilty officers in accordance with law.

The writ petition is disposed of in the manner indicated above.

(ADARSH KUMAR GOEL)
JUDGE

November 23, 2006 **(RAJESH BINDAL)**
renu **JUDGE**